Amer-Way Electric Company, Inc. and International Brotherhood of Electrical Workers, Local 477, AFL-CIO. Cases 31-CA-18980, 31-CA-19108, and 31-CA-19129

June 10, 1994

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On November 13, 1992, the National Labor Relations Board issued an Order adopting the findings and conclusions of an administrative law judge's Decision, inter alia, ordering Amer-Way Electric Company, Inc., the Respondent, its officers, agents, successors, and assigns to reinstate employees Steve Rich, Francis McKeown, Mike Nagy, and Robert Apodaca, and to offer employment to Jack Miller, Jr. and Wayne Davis and to make them whole for any loss of earnings incurred by them as a result of the discrimination practiced against them in violation of the National Labor Relations Act. On July 19, 1993, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing in full the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on October 21, 1993, the Regional Director for Region 31 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.¹

By letter dated March 21, 1994, the Regional Office advised the Respondent, that no answer to the compliance specification had been received and that unless an answer was filed by March 25, 1994, summary judgment would be sought. The Respondent filed no answer.²

¹ The General Counsel notes that the Respondent filed a Chapter 11 bankruptcy petition which was converted to a Chapter 7 proceeding on June 3, 1993.

It is well established, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id. and cases cited therein.

²On October 22, 1993, the compliance specification and notice of hearing was served by certified and regular mail on Respondent at the residence of a corporate officer, George Rabrenovich. On January 27, 1994, the Regional Director, by certified mail, issued and served an order postponing hearing on the Respondent at Rabrenovich's residence. The returned receipt was returned to the Regional Office signed by George Rabrenovich. On March 15, 1994, the compliance specification was served on the Respondent by certified and regular mail at the Respondent's last known business address. The compliance specification and notice of hearing were re-

On May 9, 1994, the General Counsel filed with the Board a motion to transfer case to and continue proceedings before the Board for Summary Judgment on compliance specification, with exhibits attached. On May 11, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of these amounts to the discriminatees, plus interest accrued on these amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Amer-Way Electric Company, Inc., San

turned unopened to the Regional Office marked "moved, left no address" by the Postal Service.

Service of these documents was properly accomplished by deposit in the mail to the Respondent's last known address. *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (Nov. 25, 1992) (not reported in Board volumes). Moreover, a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Accordingly, we find that service on George Rabrenovich in the circumstances here is adequate service.

Bernardino, California, its officers, agents, successors, and assigns, shall make whole the discriminatees named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

	TOTAL NET BACKPAY
Robert Apodaca	\$36,088.11
Wayne Davis	52,572.44
Francis McKeown	20,040.00
Jack Miller, Jr.	37,364.90
Mike Nagy	51,064.80
Stephen Rich	66,993.87

Dated, Washington, D.C. June 10, 1994

	James M. Stephens,	Member
	Dennis M. Devaney,	Member
	Charles I. Cohen,	Member
(SEAL)	NATIONAL LABOR RELATIONS BOARD	